



September 21, 2020

Hawaii Lawyers' Fund for Client Protection

City Financial Tower
201 Merchant Street, Suite 1600
Honolulu, Hawaii 96813

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Michael D. Miyahira, Trustee

RE: Application for \$25,262.82 compensation pursuant to lawyer Gary Dubin's alleged malpractices reported in Complaint, ODC 18-0212.

Dear Trustees of the 'Lawyers' Fund':

Please accept this Application for \$25,262.82 Lawyer Fund reimbursement for my partner, Sherri Kane, and I (hereafter, "Applicants") having paid to disbarred lawyer Gary Dubin that amount, pursuant to Complaint designated ODC 18-0212 filed by Ms. Kane on August 27, 2018.

In review, Ms. Kane's Complaint against Mr. Dubin prompted Investigator Andrea Sink's reply on November 27, 2018 in which the ODC requested "any and all invoices . . . from Mr. Dubin." Ms. Kane supplied those requested records timely, showing two payments made to Mr. Dubin (\$6,000 and \$19,262.82) for legal services neglected and/or improperly administered resulting in damages substantially more than this amount paid.

This Application follows notice of Mr. Dubin's Order of Disbarment published by the Supreme Court of Hawaii on September 9, 2020. This Order describes Mr. Dubin's pattern of malpractices and ethics violations damaging multiple clients. Ms. Kane's similar Complaint and reported ethics violations requested ODC's similar action, but Ms. Kane's case did not appear in this Supreme Court decision.

Ms. Kane's Complaint was apparently lost, neglected, or rejected without notice by the ODC and Supreme Court for reasons requiring further investigation and remediation as requested by the Applicants at this time.

I. FACTS

(1) On March 31, 2010, the Applicants paid Mr. Dubin \$6,000 specifically under Contract to file legal papers to block a non-judicial foreclosure ("NJF") auction administered by Hilo lawyer, Paul J. Sulla, Jr., to convert the Applicant's real Property in Pahoa, Hawaii.

(2) Mr. Dubin breached this Contract and filed nothing to enjoin Mr. Sulla's auction that Mr. Sulla administered on April 20, 2010. On July 20, 2020 the Intermediate Court of Appeals ("ICA") voided Mr. Sulla's NJF for apparent wrongdoing in CAAP-16-0000163 and remanded the case for adjudication in Civ. No. 14-1-030 currently ongoing.

(3) On July 5, 2011, Mr. Dubin demanded and was paid another \$19,262.82 to oppose Mr. Sulla's ejectment action and the Applicant's dispossession by Mr. Sulla having wrongly committed the NJF by filing forged and altered papers with the State. These criminal violations were known to Mr. Dubin, but not reported to authorities as required by his ethics rule, HRPC Rule 8.3(a).

(4) On-or-about September 26, 2011, Mr. Dubin negotiated with Mr. Sulla against the Applicant's express instruction and directive not to do so; and e-mailed the Applicants that "I would therefore be agreeable to a two-year continuance of the present state district court proceeding if Sulla wanted it." The Applicants objected to this 'back-room dealing' between Mr. Dubin and Mr. Sulla vehemently, to no avail.

(5) Failure by Mr. Dubin to file for injunctive relief against Mr. Sulla's NJF and assorted illegal filings advancing the Applicants' ejectment and dispossession occurred despite Mr. Dubin being aware that the Applicant's had defeated a judicial foreclosure on the subject Mortgage in Civ. No. 05-1-0196, and the case was under appeal (between 2009 and 2019). Regardless, Mr. Dubin enabled Mr. Sulla to continue multiplying costly proceedings (alleged malicious prosecutions and 'lawfare' to secure the Applicants' attrition) in favor of the lawyers unjust enrichment. These malpractices ultimately caused the insolvency and dissolution of the Applicant's ministry, and Horowitz's personal bankruptcy in 2016.

(6) On September 7, 2012, Mr. Dubin rejected my written request for an accounting on the \$25,262.82 paid to him, along with a request for a partial refund of sums not due and owing because only one filing, "Defendant's Motion to Dismiss [Ejectment] Complaint Filed June 21, 2011 For Lack of Subject Matter Jurisdiction"

was prepared, entered, and defended at hearing by Mr. Dubin's subordinate, Peter Stone, against the \$19,262.82 retainer.

(7) Sulla continued to prosecute the Applicants in quiet title case CV 14-1-0304, prompting Horowitz to file for Chapter 13 bankruptcy in BK 16-00239 on March 10, 2016. Therein, the Applicant pleaded for Judge Faris to stay the real Property's illegal conversion by Mr. Sulla and his presumed client, Jason Hester. Evidence from public records proved clearly and convincingly that Mr. Sulla administered a 'fraudulent transfer' of the Property by illegal Assignments of Horowitz's Mortgage and Note into a sham, not-yet-legally formed "church," all facts known to Mr. Dubin, yet neglected. Mr. Dubin concealed knowledge from law enforcers and disciplinarians that Mr. Sulla had incorporated a sham "Foreclosing Mortgagee" using forged and altered Articles of Incorporation to convey the Property ultimately to Sulla himself. These defects were facially apparent in Mr. Sulla's filings.

(8) Compounding damage done by Mr. Dubin enabling Mr. Sulla's theft scheme, Bankruptcy Trustee Howard Hu was represented by attorney Bradley R. Tamm in Applicant Horowitz's bankruptcy case (before Mr. Tamm became Director of the ODC). Attorneys Hu and Tamm were duty-bound to *avoid* Mr. Sulla's illegal Property transfers. They were to have properly administered the subject Property in favor of legitimate creditors under federal laws 11 U.S.C. §§ 541, 548 and 550. Rather than securing the Debtor's estate to fairly compensate valid creditors (exclusively Ms. Kane and attorney Margaret D. Wille (#8522)), Mr. Hu and Mr. Tamm, much like Mr. Dubin, conspired with Mr. Sulla to aid-and-abet Sulla's conversion of the Property. Each of these lawyers knew from having read the case filings that Sulla held a personal conflicting interest in the subject Property superior to his presumed client's interest by way of a \$50,000 recorded mortgage "loan" to 'sham plaintiff' Hester. Subsequently, my bankruptcy petition was dismissed but for Mr. Tamm's and trustee Hu's alleged complicity with Mr. Sulla.

(9) By March 2016, enabled by the bankruptcy proceedings, Mr. Sulla acquired for presumably Mr. Hester a quiet title to the Applicant's Property, and a Writ of Ejectment. The Applicants were soon, thereafter, dispossessed and made homeless.

(10) On August 27, 2018, ODC publication(s) prompted Applicant Kane to file the subject Complaint against Mr. Dubin (ODC 18-0212).

(11) Soon thereafter, Applicant Kane was contacted by an ODC investigator and solicited to file intertwined supplemental complaints against lawyers with whom Dubin acted in violation of ethics rules. Ms. Kane responded on September 18, 2018 by filing interrelated complaints against attorneys Paul J. Sulla, Jr. (ODC 18-0258) and Stephen D. Whittaker (ODC 18-0259).

(12) Two months later, on November 27, 2018, ODC Director Bradley R. Tamm wrote Ms. Kane that he had terminated her complaints against attorneys Sulla and Whittaker after allegedly determining “that no actionable ethical violation has been demonstrated. . . .”

(13) On-or-about December 13, 2018, outraged that Mr. Tamm had dismissed the ODC’s solicited complaints against Mr. Dubin’s alleged co-conspirators without recusing himself for conflicting interests, the Applicants filed with the Supreme Court of Hawaii, the Hawaii State Ethics Commission, and The Commission on Judicial Conduct, a sworn “COMPLAINT FOR ALLEGED VIOLATIONS OF RULES AND LAWS BY BRADLEY R. TAMM PURSUANT TO ODC COMPLAINTS 18-0258 AND 18-0259 AGAINST PAUL J. SULLA, JR. AND STEPHEN D. WHITTAKER, RESPECTIVELY, INTERTWINED WITH THE COMPLAINT AGAINST GARY V. DUBIN, 18-02012”. (See also ODC 18-0356.)

(14) On December 24, 2018, Disciplinary Board Chairman of The Hawaii Supreme Court, Clifford L. Nakea, dismissed the Applicant’s December 13, 2018 complaint, stating: “I have determined that no investigation will be undertaken and notice to you is hereby given.” Mr. Nakea cc’d Mr. Tamm regarding his indemnification from investigation and prosecution.

(15) Consequently, on January 7, 2019, I filed an ODC Complaint against Mr. Nakea, alleging multiple violations of the Hawaii Rules of Professional Conduct, as it occurred to me (as a reasonable person) that Chairman Nakea could not have possibly conducted in such short a time an ‘inquiry reasonable’ into the public records and court proceedings evidencing the substance of my complaint against Mr. Tamm pursuant to his alleged complicity with Mr. Sulla in illegally converting our Property.

(16) Four days later, on January 11, 2019, I was noticed by Vice-Chairman of the Disciplinary Board, Jeffrey P. Miller, that “Following a careful review of your complaint, I have determined that no actionable ethical violation has been demonstrated to warrant further investigation . . . I am authorized to direct that this matter be closed.”

(17) On December 5, 2019, a criminal Indictment of Mr. Sulla on counts of second degree forgery for first degree theft of our Property was issued by the State of Hawaii in 3CPC-19-0000968. It took the Hilo Grand Jury about 5-minutes of deliberation upon the same public records and Applicants’ testimony to the ODC to decide that the Indictment was justified.

(18) Mr. Sulla’s criminal trial is scheduled to commence in December 2020.

(19) The names of Mr. Sulla’s alleged complicit co-counsel, including Mr. Dubin, have been turned over to State prosecutors and federal investigators pursuant

to allegations of public corruption, racketeering, and white collar organized crime involving the aforementioned suspects.

II. Standard of Review

The Applicants refer to *Office of Disciplinary Counsel v. Gary Victor Dubin*, SCAD-19-000561, Order of Disbarment” filed September 9, 2020, for their ‘Standard of Review.’

In the ODC Case No. 16-0-147, the Court ruled Mr. Dubin violated HRPC Rules 1.5(a), 1.5(b), 8.4(c) and 1.4(a)(3) for overcharging clients and disregarding the clients’ request to account for “the status of their account.”

In the ODC Case No. 16-0-326, the Court ruled Mr. Dubin violated HRPC Rules 1.15(a) and 1.15(d) (2014) when Dubin withdrew money from the client’s funds when “Dubin had not yet earned those funds.” Moreover, Dubin “did not inform the client when he fully disbursed the client’s” funds.

The Supreme Court Ordered Dubin to pay \$19,885.00 in restitution to the clients named in ODC Case No. 16-O-147 and submit proof of said payment to this court, all within 30 days after the entry date of this order. The Disciplinary Board may, on behalf of the clients in ODC Case No. 16-O-147, seek further orders from this court in enforcement of this directive, pursuant to RSCH Rule 10, or by other means the Board determines are appropriate to propose.” (*Id.*)

III. Argument

Based on the aforementioned facts, Ms. Kane and I have been deprived of due process by the ODC, and hereby request compensation of \$19,262.82 from the Lawyers’ Fund pursuant to damages done to us by Mr. Dubin.

The evidence ODC requested, submitted by Ms. Kane in ODC 18-0212, proves that Mr. Dubin secured the Applicants’ retainer of \$6,000 on March 31, 2010, then neglected to perform on his Contract. Dubin filed nothing for that \$6,000, and by so doing aided-and-abetted Mr. Sulla’s NJF auction and real Property conversion scheme. Mr. Dubin enabled Mr. Sulla’s alleged theft by forgery and NJF to proceed despite judicial foreclosure having been denied in 2008 in Civ. No. 05-1-0196. Subsequently, additional Dubin malpractices favored attorney Sulla’s illegal conversion of the Applicants’ Property, causing the Applicants’ losses exceeding \$1 million—the estimated value of the Property.

Following Ms. Kane’s ODC Complaint against Mr. Dubin, the ODC solicited Ms. Kane to submit intertwined complaints against attorneys Paul J. Sulla, Jr. (ODC 18-0258) and Stephen D. Whittaker (ODC 18-0259). These two supplemental complaints were dismissed without good cause and reasonable inquiry by ODC Director, Bradley M. Tamm.

Mr. Tamm's conflicting interests, having aided-and-abetted Mr. Sulla's alleged "client", Sulla's personal interests and real Property conversion scheme in bankruptcy proceeding BK 16-00239, provided substantial good cause for recusal by Mr. Tamm pursuant to HRPC Rule 1.7(a)(2). Instead, Mr. Tamm subverted the ODC's due processes and prosecutions of attorneys Dubin, Sulla, and Whittaker.

To our knowledge, Ms. Kane's complaint against Mr. Dubin has never been adequately investigated. Nor can Ms. Kane recall ever receiving notice of her Dubin Complaint's dismissal by the ODC.

Alternatively, it appears that Ms. Kane's Complaint 18-0212 has been stonewalled, disappeared, or dismissed without notice, under Mr. Tamm's actions and influence, endorsed by the actions of his superiors within the Supreme Court of Hawaii.

Consequently, the Supreme Court's ruling disbaring Mr. Dubin, but neglecting/omitting Ms. Kane's sworn affidavit with corroborating evidence of Mr. Dubin's malpractices, and damage done to the Applicants by Mr. Dubin (and Mr. Sulla, Tamm, Whittaker, et. al.), evidences a violation of Hawaii Revised Statute **§ 710-1076 Tampering with physical evidence** law that states in relevant parts:

"(1) A person commits the offense of tampering with physical evidence if, believing that an official proceeding is pending or about to be instituted, the person: (a) Destroys, mutilates, conceals, removes, or alters physical evidence with intent to impair its verity in the pending or prospective official proceeding; (b) Makes, presents, or offers any false physical evidence with intent that it be introduced in the pending or prospective official proceeding. (2) "Physical evidence," as used in this section includes any article, object, document, record, or other thing of physical substance."

By neglecting, disposing, removing or concealing Ms. Kane's Complaint 18-0212 against Mr. Dubin; doing likewise by dismissing Ms. Kane's ODC solicited complaints against attorneys Paul J. Sulla, Jr. (ODC 18-0258) and Stephen D. Whittaker (ODC 18-0259), it appears that under Mr. Tamm's influence these lawyers have been safe-harbored or immunized against disciplinary and criminal charges, in violation of § 710-1076, inter alia, notwithstanding Mr. Tamm's complicity in the alleged conspiracy to convert the Applicants' real Property.

Mr. Tamm's well-evidenced § 710-1076 alleged misdemeanor has deprived Ms. Kane and I equal protections under the law, due processes afforded others similarly situated, and commensurate compensations afforded other Dubin clients/victims as ruled in *Office of Disciplinary Counsel v. Gary Victor Dubin*.

A reasonable person might view as reasonable giving Mr. Tamm a 'second chance' as his superiors did at the Supreme Court of Hawaii when appointing Mr. Tamm to direct the ODC following his service to federal trustee Hu. Positioning Mr. Tamm at the helm of the judicial branch of government's ODC after representing trustee Hu influencing all the bankruptcy estates in the state, and all creditors' awards, appears to have been a regrettable 'error' that gives the impression of substantial public corruption.

This assertion and conclusion is based on the fact that Mr. Tamm was disciplined by The State Bar of California (in Case No: 93-0-20169-CEV) for embezzling thousands of dollars in clients' money as a drug addicted alcoholic prior to this tenure within the Supreme Court of Hawaii's administration.

Subsequently, Mr. Tamm's influence over the ODC and our cases following this embarrassment appears unreasonable and irresponsible.

In other words, officials in the Supreme Court of Hawaii overlooked Mr. Tamm's California disbarment to make Mr. Tamm the 'gate-keeper' for disciplining or overlooking malpracticing lawyers in Hawaii as the facts in our cases evidence.

Opposition to this Application is similarly expected to overlook: (a) the Applicant's damage and suffering; (b) officials' conflicting interests; and (c) evidence of wrongdoing aiding-and-abetting the named complicit lawyers' crimes,

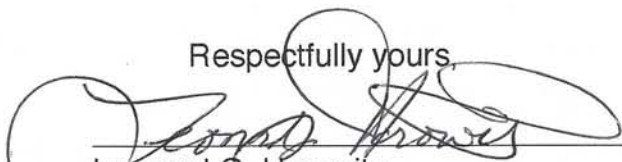
However the Trustees decide, the Applicants verify here their long-term severe distress and damaged done to them by the aforementioned injustices. These actors and actions damaged heir health and welfare, and deprived rights to equal justice under the law. The dismissal of the Applicants' earliest ODC complaints against Mr. Sulla et. al. are proximal to the Applicant's bankruptcy, loss of Property, ejection from our home, breakup of family, loss of pets, Ms. Kane's cardiovascular illnesses and stroke from which she is currently laboring to recover.


In essence, the ODC's dismissals and apparent evasion of justified disciplinary action in our cases have substantially contributed to destroying our lives..

In conclusion, good cause being shown, with Mr. Dubin having been disciplined by your agency, with Mr. Sulla's criminal prosecution for forgery and Property theft ongoing, and Mr. Tamm and Mr. Whittaker subject to pending criminal complaints seeking prosecution for what appears to be complicity in 'public corruption,' I request that the Hawaii Lawyers' Fund for Client Protection fulfill its advertised mission and function to provide compensation to Ms. Kane and myself as Mr. Dubin's damaged clients.

Summarily, we Applicants request \$25,262.82 of relief at this time.

Respectfully yours,


Leonard G. Horowitz
Co-Applicant


Sherri Kane
Co-Applicant